

PUBLIC UTILITIES COMMISSION

505 VAN NESS AVENUE
SAN FRANCISCO, CA 94102-3298



January 7, 2003

Agenda ID #1601

TO: PARTIES OF RECORD IN APPLICATION 02-09-040

This is the draft decision of the Commission. It will not appear on the Commission's agenda for at least 30 days after the date it is mailed. The Commission may act then, or it may postpone action until later.

When the Commission acts on the draft decision, it may adopt all or part of it as written, amend or modify it, or set it aside and prepare its own decision. Only when the Commission acts does the decision become binding on the parties.

Parties to the proceeding may file comments on the draft decision as provided in Article 19 of the Commission's "Rules of Practice and Procedure." These rules are accessible on the Commission's website at <http://www.cpuc.ca.gov>. Pursuant to Rule 77.3 opening comments shall not exceed 15 pages. Finally, comments must be served separately on the ALJ/Legal Division and the Water Division, and for that purpose I suggest hand delivery, overnight mail, or other expeditious method of service.

/s/ CAROL A. BROWN
Carol A. Brown, Interim Chief
Administrative Law Judge

CAB:k47

Attachment

Decision DRAFT DECISION (Mailed 1/7/2003)

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of Fruitridge Vista Water
Company's Petition for Modification of
Resolution No. W-4252 of June 14, 2001.

Application 02-09-040
(Filed September 26, 2002)

Opinion Denying Petition to Modify

Summary

This decision denies the Petition of the Fruitridge Vista Water Company (FVWC) to Modify Resolution W-4252 (Petition) because no clarifying language is needed.

In particular, our review of the materials before us¹ shows that Resolution W-4252 has not deemed Robert C. Cook, Sr. to be the in-house attorney for FVWC, nor does the resolution give any directive indicating that his current compensation covers FVWC's needs for legal services. Furthermore, the Commission has reached no conclusion concerning the reasonableness of any contract subsequently entered into by FVWC for legal services with Robert C. Cook, Sr. or any other party. Thus, Resolution W-4252, including Appendix E, requires no modification.

¹ These materials consist solely of FVWC's Petition (including Declaration of Robert C. Cook, Sr.) and Resolution W-4252 (including Appendix E).

Background

The Petition specifically asks us to modify the resolution by adding the following language:

The legal experience of a lawyer adds value to his performance as financial manager. However, we find that Robert C. Cook, Sr. is not counsel for FVWC and does not act as an in-house attorney for FVWC in any capacity. Robert C. Cook, Sr. is not employed by FVWC as house counsel to provide professional legal services to FVWC in his capacity as financial officer or in any other capacity, or at all. Moreover, the employment of Robert C. Cook, Sr. does not include any services other than as the financial manager, and does not include any in-house payment or salary for professional legal services to Robert C. Cook, Sr.²

FVWC states that although the current resolution notes that Robert C. Cook, Sr. is a lawyer, it clearly indicates that he is the Financial Manger of FVWC.

As background to the Petition, FVWC explains that it is engaged in complex litigation over MBTE contamination of its wells. FVWC states that Cook, Sr. “undertook to represent Fruitridge in the subject litigation after being unsuccessful in finding a private law firm that would handle the lawsuit.”³ According to FVWC,

[O]n July 24, 2002, in a meeting with Izetta Jackson of the Water Division, Mr. Cook was informed that Water Division considers him to be the house counsel for Fruitridge, based on the ALJ decision as part of Resolution No. W-4252, with his legal services covered as part of the salary for his position of Financial Manager. Mr. Cook

² FVWC, Petition, p. 4.

³ FVWC, Petition, p. 2.

was further informed that Water Division considers his contingent fee contract with Fruitridge to be invalid.⁴

The thrust of FVWC's Petition is that the duties of Cook, Sr. as Financial Manager do not include "attorney service of the kind required to represent Fruitridge in superior court litigation, or of any kind, other than the enhanced value that his legal training brings to his performance as Financial Manager."⁵ FVWC argues that the conclusions of the Water Division, as FVWC understands them, are unfair, and further argues that [t]his matter must be resolved quickly, so that Fruitridge can proceed efficiently with the litigation."⁶

Neither the Water Division nor any other entity filed a response to the Petition.

Discussion

There are very few references in the resolution to the Financial Manager or the duties of that position, and it is possible to repeat every reference:

FVWC currently has one general manager, Robert Cook, Jr. and one financial manager, Robert Cook, Sr. . . .The financial manager is responsible for providing professional business, financial and legal advice to the trustee and general manager. (Res. W-4252, p.2.)

FVWC requests \$190,000 for management salaries in test year 2000. This includes \$85,000 for the Financial Manager (who is also a lawyer), \$90,000 for the General Manager, and \$15,000 as extra compensation to the General Manager for dealing with specific

⁴ *Ibid.*

⁵ *Ibid.*

⁶ *Ibid.*

issues relating to the MTBE contamination of FVWC's wells. . . . In addition, FVWC points out that because of the skills of its management team, FVWC uses very few professional services and consequently salaries should reflect this saving. (Res. W-4252, App. E, p.5.)

Similarly, the \$85,000 salary for the Chief Financial Officer, who also functions as an attorney, appears reasonable in light of FVWC's ability to avoid substantial use of outside professional services. (Res. W-4252, App. E, p.5.)

There is no other discussion of the Financial Manager or the duties of this office.

From these scanty references to the duties of the Financial Manager, we see that the resolution does not rule or provide guidance on the reasonableness of any contract for services pertaining to the complex litigation that arises from MTBE contamination. Moreover, our decisions typically do not provide such guidance. Resolution W-4252 and the ALJ Ruling attached as Appendix E speak for themselves. Contracts entered into by FVWC for legal representation and litigation costs are subject to reasonableness reviews in general rate case proceedings. Resolution W-4252 does not prejudice the reasonableness of any contract for legal services, nor does it include legal representation in complex litigation within the scope of the duties of this Financial Manager. We see no need to modify Resolution W-4252 or to depart from our normal procedures for determining the reasonableness of a utility's actions.

Comments on Draft Decision

The draft decision in this matter was mailed to the parties in accordance with Pub. Util. Code § (311(g)(1) and Rule 77.7 of the Rules of Practice and Procedure. Comments were filed on _____, and reply comments were filed on _____.

Findings of Fact

1. Resolution W-4252 makes no findings concerning the scope of the duties of the Financial Manager of FVWC.

2. Resolution W-4252 makes no findings concerning the prospective reasonableness of any contract entered into by FVWC for representation in litigation arising from MTBE contamination of its wells.

It is not reasonable to modify Resolution W-4252 to prevent interpretations that have no basis in the resolution or its findings.

3. Contracts entered into by a utility, including contracts for legal representation and litigation costs, are normally subject to reasonableness review in appropriate proceedings, typically general rate cases.

Conclusions of Law

1. FVWC's Petition to Modify Resolution 4252 should be denied as unnecessary.

2. To provide prompt guidance to the FVWC, today's order should be made effective immediately.

O R D E R

IT IS ORDERED that:

1. The Petition of Fruitridge Vista Water Company to Modify Resolution W-4252 is denied.

2. Application 02-09-040 is closed.

This order is effective today.

Dated _____, at San Francisco, California.